



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 28, 1998

Mr. Sim W. Goodall
Police Legal Advisor
City of Arlington
P.O. Box 1065
Arlington, Texas 76004-1065

OR98-2519

Dear Mr. Goodall:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 119075.

The City of Arlington (the "city") received a request for an audio tape copy of a specific 911 call. You contend that the requested audio tape is excepted from disclosure under section 552.108 of the Government Code. You also cite *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996) to support your claim.¹ We have considered your claimed exception and have reviewed the submitted audio tape and transcript.

Section 552.108, the "law enforcement exception," provides in relevant part as follows:

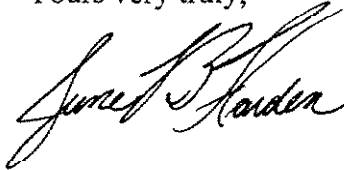
(a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; [or] (2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. . . .

¹We note that the *Holmes* court construed former section 552.108 which is no longer in effect. The Seventy-fifth Legislature made significant, substantive changes to section 552.108. Thus, former section 552.108 and the *Holmes* interpretation of former section 552.108 are superseded by the amended section.

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You explain that the requested 911 call may contain evidence critical to the prosecution of a capital murder case. Based upon your representation that the requested information relates to a pending criminal prosecution, we find that the release of the audio tape would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the city may withhold the submitted audio tape from disclosure under section 552.108(a)(1).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "June B. Harden", written in a cursive style.

June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 119075

Enclosures: Submitted information

cc: Mr. J. D. Miles
2420 Travis
Plano, Texas 75093
(w/o enclosures)